

BEFORE THE

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Federal Communications Commission

WASHINGTON, D.C. 20554

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MAY 21 1996

In the Matter of)

Amendment of the Commission's)

Regulatory Policies Governing Domestic)

Fixed Satellites and Separate International)

Satellite Systems)

IB Docket No. 95-41

To: The Commission

**OPPOSITION TO PETITION FOR
PARTIAL RECONSIDERATION AND IMMEDIATE INTERIM RELIEF**

Columbia Communications Corporation ("Columbia"), by counsel and pursuant to Section 1.429(f) of the Commission's Rules, hereby opposes the "Petition for Partial Reconsideration and Immediate Interim Relief " filed by Comsat Corporation ("Comsat") on April 11, 1996 in the above-captioned docket.^{1/} Both Comsat's request for "reconsideration," as a means of granting it authority to serve the U.S. domestic market using INTELSAT and Inmarsat capacity, and its companion request that the Commission implement this relief immediately are procedurally inappropriate and should be rejected by the Commission. Moreover, the policy justification that Comsat asserts in support of its request is itself invalid and would provide no basis for Commission action, even if such action were otherwise appropriate.

^{1/} See Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, 11 FCC Rcd 2429 (1996) ("DISCO I Order").

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I. Comsat's Petition Is Procedurally Inappropriate.

Comsat's Petition is procedurally flawed in that it asks the Commission to "reconsider" an issue that was not actually acted on in the underlying Order — the use of non-U.S.-licensed satellites for the provision of U.S. domestic service. Instead of rendering a final decision on that question, the Commission deferred it to a separate rulemaking proceeding. Thus, the only action which the Commission can reconsider is its determination in the DISCO I Order to defer action on this issue.

Reversal of the Commission's initial determination would still leave the Commission with the need to fully consider in the first instance both the reasonableness of and the appropriate approach to permitting U.S. domestic service via non-FCC-licensed satellite capacity. Because the Commission has already initiated a new proceeding to address this issue,^{2/} the Petition is moot with respect to the only relief that the Commission could grant — revisiting and deciding the issue that was previously deferred. This process will now take place in the DISCO II proceeding already underway. Accordingly, the Comsat Petition should be denied.

^{2/} See Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, FCC 96-210, slip op. (released May 14, 1996) ("DISCO II NPRM").

II. There Is No Basis For Comsat's Assertion That Its Present Inability To Offer U.S. Domestic Service Using INTELSAT and Inmarsat Capacity Is Unfair Or Discriminatory.

Apart from the procedural inappropriateness of Comsat's Petition, its argument for immediate relief is lacking in substance. Specifically, Comsat's complaint that it is unfairly disadvantaged by the current state of Commission policy is entirely misplaced; there is no merit to its assertion that it is the object of "disparate treatment of similarly situated satellite systems."^{3/} In reality, there are no other U.S. companies with which Comsat is similarly situated with respect to use of INTELSAT and Inmarsat capacity.

As the Commission knows well, Comsat is a unique animal in the satellite genus. Although it is a U.S. company, it is not a U.S.-licensed satellite system — the particular species covered by the Commission's DISCO I Order. Indeed, contrary to Comsat's own implication, it is not a satellite system operator at all,^{4/} but a reseller of capacity that is offered by INTELSAT and Inmarsat, both of which are controlled by non-U.S. interests.^{5/} As a reseller, Comsat may provide customers both domestic and international service by utilizing capacity on satellites authorized for these uses; however,

^{3/} Comsat Petition at 8 n.15.

^{4/} See Comsat Petition at 2 (incorrectly stating that "of all the U.S. companies that are capable of providing service via their own satellite facilities, COMSAT is the only one omitted from the DISCO I Order.") (emphasis added)

^{5/} The INTELSAT system is 81% foreign controlled.

the DISCO I Order defers the question whether INTELSAT and Inmarsat capacity may be used to provide U.S. domestic service and, if so, on what terms. In the interim, no entity is permitted to utilize this unique capacity for service within the United States.^{6/}

Comsat's structure and mode of operation is simply not analogous to that of any FCC-licensed company that operates its own satellite facilities. For example, only Comsat is permitted under present law to offer capacity on INTELSAT and Inmarsat satellites for any purpose. As a result, Comsat's argument of unique disadvantage rings particularly hollow. Through its petition, Comsat is actually seeking to extend its uniquely advantaged status as a conduit for INTELSAT and Inmarsat capacity from international service to domestic service. The fact that it is not immediately able to do so does not mean it is suffering discriminatory treatment, as no other provider has direct access to this capacity for any purpose.^{7/}

Because neither INTELSAT nor Inmarsat is U.S.-owned or U.S.-licensed, it was entirely appropriate for the Commission to conclude that the issue of permitting capacity on these systems to be used for provision of U.S. domestic service should be

^{6/} Notably, Comsat does not have an application pending to use INTELSAT capacity to provide service to the U.S.; therefore, any such request would necessarily be subject to consideration pursuant to the terms of the DISCO II NPRM. See DISCO II NPRM, FCC 96-210, slip op. at 11 (¶21).

^{7/} It should also be noted that Comsat has been very willing over a period of many years to accept the immense benefits of its privileged statutory position as a monopoly provider of INTELSAT and Inmarsat service, and it is therefore in no position to complain that it is now uniquely handicapped because of the Commission's need to consider thoroughly the myriad issues presented by the possible use of these systems to provide U.S. domestic service.

considered in the context of a general rulemaking concerning access to the U.S. market for systems that are not licensed by the FCC.^{8/} Indeed, because of the special circumstances relating to INTELSAT and Inmarsat capacity, these issues are, if anything, more complex than the more routine market entry issues that exist with respect to satellites authorized by foreign administrations.^{9/}

**III. The Commission's Decision To Defer To A Future Rulemaking
The Difficult Issues Relating To Use Of INTELSAT and
Inmarsat Capacity To Provide U.S. Domestic Service Is
Entirely Consistent With U.S. Law and Policy.**

Finally, Comsat's claim that the Commission's decision to defer consideration of the issue of using INTELSAT and Inmarsat capacity for domestic U.S. service is somehow "inconsistent" with U.S. law and policy governing INTELSAT and Inmarsat is baseless.^{10/} Statutory language referring to the commitment of the United States to establish and support these international systems is inapposite to the issue of allowing this capacity to be used for the very different purpose of providing U.S. domestic communications. Whether such a significant change should be permitted, and on what terms, is appropriately one of the subjects of the Commission's DISCO II NPRM; it is not a policy question that is governed by existing statute, precedent, or

^{8/} The record assembled in the course of the DISCO I proceeding was overwhelmingly negative on the question of extending the Comsat/INTELSAT monopoly to U.S. domestic service. See DISCO II NPRM, FCC 96-210, slip op. at 22 (¶ 63).

^{9/} See DISCO II NPRM, FCC 96-210, slip op. at 22-25 (¶¶ 62-74).

^{10/} See Comsat Petition at 8-12.

policy. As Comsat itself states, U.S. support for INTELSAT is premised on the importance of its “global public service obligations.”^{11/} A history of such support does not mandate that the U.S. honor INTELSAT’s (or Comsat’s) domestic commercial aspirations.

IV. Conclusion

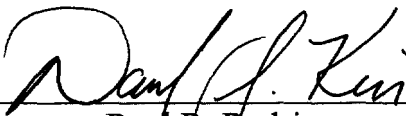
For the foregoing reasons, Columbia respectfully requests that the Commission reject Comsat’s Petition for Reconsideration as moot in light of the Commission’s recent adoption of the DISCO II NPRM. Because important policy issues concerning the possible use of INTELSAT and Inmarsat capacity for provision of domestic U.S. service have yet to be addressed in that proceeding, it would be

^{11/} Comsat Petition at 9, citing Communications Satellite Corporation v. FCC, 836 F.2d 623, 625 (D.C. Cir. 1988).

inappropriate for the Commission to prejudge them by granting the sort of interim relief that Comsat has requested. Moreover, Comsat has made no showing that such relief is in any way justified. Accordingly, its petition should be rejected in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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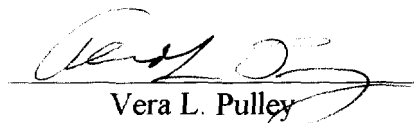
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